



**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 12-7

October 7, 2013

Petition of Charter Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Charter Communications that are currently subject to rate regulation.

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RATE ORDER

APPEARANCES:

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FOR: Charter Communications  
Petitioner

## I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the petition of Charter Communications (“Charter”) seeking to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its regulated Massachusetts communities.

## II. PROCEDURAL HISTORY

On October 2, 2012, Charter filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Charter proposed BST MPRs for each of its regulated Massachusetts communities.<sup>1</sup> Contemporaneously, Charter filed a nationwide FCC Form 1205 that proposed equipment and installation MPRs for all of its regulated Massachusetts communities. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates became effective on February 8, 2013. *See* 47 C.F.R. § 76.933(g).

The Department issued its First Set of Information Requests on February 4, 2013 and an Order of Notice and Notice of Public Hearing on February 13, 2013. *Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmty’s in Mass. served by Charter that are currently subject to rate regulation*, Docket 12-7 (2013) (“Docket”). On February 18, 2013, Charter filed its response to the Department’s First Set of Information Requests. *Id.* The Department held public and evidentiary hearings on

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<sup>1</sup> Charter originally filed FCC Forms for 49 municipalities. However, on September 30, 2013, the FCC exempted 30 Massachusetts municipalities subsequent to the commencement of this proceeding by determining that Charter is subject to effective competition in the towns of Auburn, Douglas, Dudley, Grafton, Millbury, Northborough, Oxford, Southborough, Southbridge, Upton, West Brookfield, Westborough, Worcester, Brookfield, Charlton, East Brookfield, Hinsdale, Lanesborough, North Brookfield, West Stockbridge, Barre, Berlin, Groton, Hubbardston, Oakham, Pepperell, Rutland, Sutton, Uxbridge, and Westport. *In re Charter Commc’ns*, DA 13-2008, Fed. Commc’n Comm’n, Memo & Order at 1 (rel. Sept. 30, 2013). The Department is evaluating this ruling. At this point, the remaining 19 regulated communities are Boylston, Brimfield, Chicopee, East Longmeadow, Easthampton, Hampden, Holden, Leicester, Ludlow, Northbridge, Paxton, Southampton, Spencer, Sturbridge, West Boylston, Wilbraham, Belchertown, Hadley, and Harvard.

March 19, 2013. *Id.* On April 2, 2013, Charter submitted its response to the Department's Record Requests. *Id.* Charter also notified the Department on April 2, 2013 that it would switch the date of its annual rate adjustment from January 1 of each year to February 1 of each year. Docket at 1. On May, 3, 2013, the Department issued a Second Set of Record Requests. *Id.* Charter filed its response to the Department's Second Set of Record Requests on May 16, 2013. *Id.* On July 24, 2013, the Department issued a Third Set of Record Requests. Docket at 1. On August 9, 2013, Charter filed its response to the Department's Third Set of Record Requests. *Id.*

The evidentiary record consists of fifty Charter exhibits, eleven responses to Department Information Requests, the transcripts to the public and evidentiary hearings, and fifteen responses to Department Record Requests.<sup>2</sup>

### III. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Charter's FCC Forms 1240 and denies Charter's FCC Form 1205, subject to the Department's findings below.

#### A. Review of Charter's FCC Forms 1240

A cable operator must calculate its rates using specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. Pursuant to the Form 1240 regulations, the FCC allows a cable operator to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs ("FRC"). *See* 47 C.F.R. § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See* 47

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<sup>2</sup> Citations to Department issued Information Requests and Charter's responses are to "IR 1-1," *et seq.* Citations to the evidentiary transcript are to "Tr. at [page number]." Citations to Department issued Record Requests and Charter's responses are to "RR 1-1," *et seq.*

C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRC to the extent they are reasonably certain and reasonably quantifiable, but FRC projections are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

The standard under which the Department reviews rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. 47 C.F.R. § 76.922(a). Specifically, the FCC directs local rate regulators such as the Department to ensure that the proposed rates are in compliance with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department may accept as compliant with the statute BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. 47 C.F.R. § 76.922(a), (c). In addition, the Department shall approve only those rates that it deems reasonable. 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act and implementing regulations. 47 U.S.C. § 543; *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, 8 FCC Rcd. 5631, 5716 ¶ 128 (rel. May 3, 1993) ("*FCC Rate Order*"); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator). The Department approves Charter's FCC Forms 1240 and finds the proposed rates to be reasonable and in accordance with FCC regulations.

1. Programming costs for Hinsdale, Lanesboro, and West Stockbridge

As part of its review, the Department inquired into an increase in programming costs for the towns of Hinsdale, Lanesboro, and West Stockbridge (“three Towns”). IR 1-7. The FCC, through Form 1240, requires an operator to state the amount of copyright charges it incurs for providing its channel lineup. *Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* at 2 (July 1996). This amount should normally be equal to the amount that appears on the operator’s semi-annual copyright forms. *See* 37 C.F.R. § 201.17(d)(2)(ii); U.S. Copyright Office, SA3 Long Form (Jan. 1, 2011). However, Charter’s FCC Forms 1240 for the aforementioned towns contained charges in excess of its SA3 Long Form filing. *See* IR 1-7.

Charter explained that the difference is attributable to a situation unique to the three Towns. Whereas a secondary transmission cost would normally incur an incremental copyright cost, Charter did not incur incremental copyright costs in the three Towns because they were small enough to qualify for “flat fee” copyright payment treatment (meaning copyright fees are represented in a single charge). RR 1-5. In the three Towns, one channel, WPIX, is delivered to Charter by Dish Network Distribution System through a separate Transport Services Agreement. *Id.* The cost incurred for the delivery of WPIX is therefore an external cost that Charter is entitled to recover separately from the flat fee copyright payment. *See* 37 C.F.R. § 201.17(b)(1). Because the FCC Form 1240 numbers should match the operator’s semi-annual copyright forms, it would be inappropriate for Charter to include this channel’s delivery cost in its flat fee copyright costs. *See* 37 C.F.R. § 201.17(d)(2)(ii); U.S. Copyright Office, SA3 Long Form (Jan. 1, 2011). Since the initial Department inquiry into their programming costs, the FCC has recently ruled that the three Towns are subject to effective competition, thus rendering this issue

moot. *Supra* at n.1. The Department, however, endorses Charter's treatment of such costs as an operator is entitled to recover the cost of delivery for such channels. As the inclusion of delivery charges in an operator's semi-annual copyright forms would be inappropriate, the Department endorses the addition of a fee for delivery in the operator's FCC Form 1240 programming cost category.

## 2. FCC Form 1240 Rates Approved

The Department approves the FCC Forms 1240 for Charter's 19 regulated Massachusetts communities. The Department finds that Charter's FCC Forms are reasonable and are prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15.

### B. Review of the FCC Form 1205

In its FCC Form 1205 filing, Charter proposed adjustments to its MPR for equipment and installation according to FCC rate regulations. The Department analyzed Charter's proposed adjustments and accepts its FCC Form 1205 as filed. Charter's BST MPRs and operator selected rates for equipment and installations are in the Rate Schedule included as Attachment 1.

The FCC Form 1205 is used to establish rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation*, at 1, 7, 11-13 (June 1996). A cable operator prepares the FCC Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2-3. In this proceeding, Charter's FCC Form 1205 is for the fiscal year ending December 31, 2011. Exh. Charter-1, at 1.

In accordance with the FCC's regulatory requirements, subscriber charges established using FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2).

The equipment regulated using a FCC Form 1205 “consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier.” 47 C.F.R. § 76.923(a)(1). Such regulated equipment includes, but is not limited to, converter boxes and remote control units. *Id.* The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with § 623 of the Communications Act and its implementing regulations. 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128; 47 C.F.R. § 76.937(a)(regulation assigning the burden of proof to the cable operator).

In this proceeding, the Department investigated a change in price for the regulated standard digital receiver and remote (“SDRR”) and the unregulated interactive guide services (“IGS”). *See IR* 1-11. From its January 2012 rate card to its August 2012 rate card, Charter’s rate for a SDRR decreased from \$1.40 to \$0.00 while the rate for its IGS increased from \$3.60 to \$5.00. In the next rate card filed with the Department for February 2013, the rate for the SDRR remained at \$0.00 while the rate for IGS increased further to \$5.99.

The Department asked Charter for the reason why it had not indicated any change in its SDRR rates on its notifications sent to communities on January 4, 2013, as the MPR decreased from \$2.50 to \$1.01 and the previous operator selected charge was \$1.40. According to Charter, it had elected to drop the rate for its SDRR from \$1.40 to \$0.00, thus there was no change indicated on the notifications. *IR* 1-11. The Department also inquired into Charter’s reason for no longer charging for the SDRR. Charter explained that it decreased the SDRR rate below the MPR to simplify marketing and to minimize the rate increase impact on customers. *RR* 2-1. Charter also stated that because the \$0.00 price for the SDRR is below the MPR, this approach was consistent with current regulations. *Id.* Charter further explained that the IGS are unregulated and Charter standardized the rate at \$5.99 in February 2013. *Id.* The Department

requested that Charter provide an amended Form 1205 to include the IGS as either part of the overall cost for the SDRR or as a stand-alone item. But, Charter stated that the “interactive guide service is a software-based service and is not a component of equipment subject to the Form 1205.” RR 2-3. When the Department asked for the number of Charter customers leasing an SDRR without the IGS, Charter responded that “we believe all current customers in MA subscribe to the IGS based on the fact that it is an attractive feature.” RR 2-2.

The Department is concerned that Charter’s separation of the rates for SDRRs and IGS may constitute an improper shift of rates from a regulated to an unregulated tier, because no Charter customers take an SDRR without the functionality offered through the IGS. *See* 47 C.F.R. § 76.923(a). The absence of any customers who lease only the SDRR leads the Department to suspect that the IGS is not a separate service, but is, along with the SDRR, an integral part of the equipment “used to receive the basic service tier” under 47 C.F.R. § 76.923(a). The Department at this time does not determine whether rates for IGS should be included with rates for the SDRR to avoid circumvention of rate regulation. The Department will continue to assess whether such rate separation complies with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128; 47 C.F.R. § 76.937(a). Thus, for the time being, the Department accepts Charter’s FCC Form 1205 for the fiscal year ending December 31, 2011 as filed.

#### IV. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Charter’s FCC Forms 1240, as filed on October 2, 2012, for the communities of Boylston, Brimfield, Chicopee, East Longmeadow, Easthampton, Hampden,



Holden, Leicester, Ludlow, Northbridge, Paxton, Southampton, Spencer, Sturbridge, West  
Boylston, Wilbraham, Belchertown, Hadley, and Harvard are approved; and it is

FURTHER ORDERED: That Charter's FCC Form 1205, as filed on October 2, 2012, is  
approved.

By Order of the Department

/s/ Geoffrey G. Why  
Geoffrey G. Why, Commissioner

### **RIGHT OF APPEAL**

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.